

the U.S. Department of Health and Human Services pursuant to the provisions of the Federal Tort Claims Act, Title 28 §1346(b), 2671-2680, alleging liability of the United States Government. See Attached Exhibit A.

3. On May 22, 2013, the United States Government rejected the claim of Anais Ortiz in a letter which is attached hereto as Exhibit B.

4. That ANAIS ORTIZ has been appointed as Independent Administrator of the Estate of ANTONIO FIERRO, deceased, by the Circuit Court of Cook County, Illinois, evidencing her right and standing to sue. A copy of the Order is attached hereto as Exhibit C.

5. The cause of action of this Complaint against USA is the same cause of action contained in the claim to the U.S. Department of Health and Human Services.

II. Jurisdiction & Venue

6. This Court has jurisdiction of the action pursuant to 28 U.S.C. Section 1346 and 2671, et seq.

7. Venue is proper under 28 U.S.C. Section 1402(b).

III. The Parties

8. Plaintiff, ANAIS ORTIZ, is bringing this action in her capacity as Independent Administrator of the Estate of ANTONIO FIERRO, deceased.

9. ANAIS ORTIZ, at all relevant times, was a resident of the State of Illinois.

10. ANTONIO FIERRO, deceased, at all relevant times, was a resident of the State of Illinois.

11. USA, through the U.S. Department of Health and Human Services, maintains the PCC COMMUNITY WELLNESS CENTER (hereinafter "PCC"), located in Illinois.

12. WEST SUBURBAN is an Illinois healthcare facility licensed to do business in the State of Illinois.

IV. Factual Allegations

13. At all relevant times hereto, the Defendant, USA, by and through its agents, servants and/or employees, was a health care facility located in the State of Illinois, employing various health care professionals and offering medical services, including but not limited to diagnosis, treatment, and consults to the public and to ANAIS ORTIZ and her unborn child, ANTONIO FIERRO.

14. At all relevant times hereto, the Defendant, WEST SUBURBAN, by and through its agents, servants and/or employees, was a health care facility located in the State of Illinois, employing various health care professionals and offering medical services, including but not limited to diagnosis, treatment, and consults to the public and to ANAIS ORTIZ and her unborn child, ANTONIO FIERRO.

15. That on and subsequent to December 6, 2011, and at all times relevant hereto, USA, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D. and PAUL LUNING, M.D., accepted and undertook to provide medical and obstetric care and treatment to ANAIS ORTIZ and her unborn child, ANTONIO FIERRO.

16. That on and subsequent to December 6, 2011, and at all times relevant hereto, WEST SUBURBAN, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D. and PAUL LUNING, M.D. and various other physicians and nurses, accepted and undertook to provide medical, obstetric and nursing care and

treatment to ANAIS ORTIZ and her unborn child, ANTONIO FIERRO.

17. That on and subsequent to December 6, 2011, and at all times relevant hereto, CHRISTINE SWARTZ, M.D., was a physician licensed to practice medicine in the State of Illinois.

18. That on and subsequent to December 6, 2011, and at all times relevant hereto, CHRISTINE SWARTZ, M.D. was an agent, servant and/or employee, whether actual or apparent, of USA and WEST SUBURBAN.

19. That on and subsequent to December 6, 2011, and at all times relevant hereto, PAUL LUNING, M.D., was a physician licensed to practice medicine in the State of Illinois.

20. That on and subsequent to December 6, 2011, and at all times relevant hereto, PAUL LUNING, M.D. was an agent, servant and/or employee, whether actual or apparent, of USA and WEST SUBURBAN.

21. That at approximately 10:00 p.m. on December 6, 2011, ANAIS ORTIZ, presented to WEST SUBURBAN with ruptured membranes.

22. That at approximately 12:26 a.m. on December 7, 2011, ANAIS ORTIZ was admitted to the Labor and Delivery department at WEST SUBURBAN under the care of CHRISTINE SWARTZ, M.D.

23. That at approximately 6:00 a.m. on December 7, 2011, ANAIS ORTIZ was started on Pitocin per PAUL LUNING, M.D.'s order.

24. That at approximately 10:00 a.m., an epidural was inserted into ANAIS ORTIZ per PAUL LUNING, M.D.'s order.

25. That at approximately 11:30 p.m. on December 7, 2011, CHRISTINE SWARTZ, M.D. performed a cesarean section on ANAIS ORTIZ.

26. That during the procedure it was determined that ANAIS ORTIZ had sustained a uterine rupture and significant blood loss.

27. On December 7, 2011, ANAIS ORTIZ gave birth to ANTONIO FIERRO who did not appear to have a pulse.

28. That on or about December 8, 2011, ANTONIO FIERRO was transferred to Children's Memorial Hospital.

29. That on or about December 16, 2011, ANTONIO FIERRO died.

COUNT I
UNITED STATES OF AMERICA

30. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

31. At all times relevant hereto, there existed a duty on the part of the Defendants, USA, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D., and PAUL LUNING, M.D., to provide adequate medical care, surgical care, diagnosis and treatment to its patients, including ANAIS ORTIZ and ANTONIO FIERRO.

32. Contrary to its duty, the Defendant, USA, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D., and PAUL LUNING, M.D., were guilty of one or more of the following careless and negligent acts or omissions:

- a. Failed to timely perform a cesarian section;
- b. Failed to sufficiently and timely evaluate ANAIS ORTIZ;
- c. Failed to adequately monitor fetal heart rate activity;

- d. Failed to appreciate the alarming features on the fetal heart rate monitor; and
- e. Failed to appreciate ANAIS ORTIZ's VBAC status.

33. As a direct and proximate cause of one or more of the above-mentioned careless acts and/or omissions of the Defendant, USA, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D., and PAUL LUNING, M.D., Decedent, ANTONIO FIERRO, sustained significant and irreversible injuries which ultimately resulted in his death on December 16, 2011.

34. Plaintiff attaches hereto, as Exhibit D, copies of the reports from a physician regarding the meritorious nature of the claim against USA for negligence.

COUNT II
WEST SUBURBAN

1-29. Plaintiff hereby realleges and repeats Paragraphs 1 through 29 of this Complaint as Paragraphs 1 through 29 of Count II as though fully stated herein.

30. At all times relevant hereto, there existed a duty on the part of the Defendant, WEST SUBURBAN, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D., and PAUL LUNING, M.D. and various other physicians and nurses, to provide adequate medical care, surgical care, diagnosis and treatment to its patients, including ANAIS ORTIZ and ANTONIO FIERRO.

31. Contrary to its duty, the Defendant, WEST SUBURBAN, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D., and PAUL LUNING, M.D. and various other physicians and nurses, were guilty of one or more of the following careless and negligent acts or omissions:

- a. Failed to timely perform a cesarian section;
- b. Failed to sufficiently and timely evaluate ANAIS ORTIZ;
- c. Failed to recognize the significance of ANAIS ORTIZ's signs and symptoms of cramping, painful contractions and ruptured membranes;
- d. Failed to adequately monitor fetal heart rate activity;
- e. Failed to appreciate the alarming features on the fetal heart rate monitor;
- f. Failed to appreciate ANAIS ORTIZ's VBAC status;
- g. Failed to properly train staff employed by the institution;
- h. Failed to properly and adequately supervise staff employed by the institution;
- i. Failed, as an institution, to provide adequate resources and personnel in order to facilitate an emergency cesarean section in a timely manner; and
- j. Failed to properly and adequately communicate the findings of the fetal heart rate monitor.

32. As a direct and proximate cause of one or more of the above-mentioned careless acts and/or omissions of the Defendants, USA and WEST SUBURBAN, by and through its actual and apparent agents, servants and/or employees, including, but not limited to, CHRISTINE SWARTZ, M.D., and PAUL LUNING, M.D. and various other physicians and nurses, Decedent, ANTONIO FIERRO, sustained significant and irreversible injuries which ultimately resulted in his death on December 16, 2011.

33. Plaintiff attaches hereto, as Exhibit E, copies of the reports from a physician regarding the meritorious nature of the claim against WEST SUBURBAN for negligence.

WHEREFORE, the Plaintiff, ANAIS ORTIZ, as Independent Administrator of the Estate of ANTONIO FIERRO, Deceased, prays for judgment against the Defendant, WEST SUBURBAN, in

such an amount in excess of this Court's jurisdictional requisite that will fairly and adequately compensate for the losses alleged herein.

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